

Rule 131. Use of Interactive Video Teleconference in Civil Cases**Rule 131.01 Definitions**

(a) "ITV" refers to interactive video teleconference.

(b) A "terminal site" is any location where ITV is used for any portion of a court proceeding.

(c) The "venue county" is the county where pleadings are filed and hearings are held under current court procedures.

(Added effective March 1, 2009.)

Rule 131.02 Permissible Uses; Initiation

In all civil actions and proceedings including commitment proceedings subject to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act, the court may conduct hearings and admit oral testimony, subject to cross-examination, by live audio-visual means, where authorized by this rule.

(a) Scheduling Conflicts. All scheduling conflicts and priorities shall be determined by the judge(s).

(b) Use of ITV on Court's Initiative; Notice. If the court on its own initiative orders the use of live audio-visual means (ITV) to conduct hearings and proceedings, it shall give notice in accordance with the Rules of Civil Procedure and General Rules of Practice, which notice shall advise the parties of the duty to exchange information under Rule 131.04, and the prohibition on recording in Rule 131.06(i).

(c) Use of ITV Upon Stipulation. The parties may, subject to court approval and site availability, stipulate that a hearing or proceeding be conducted by ITV in accordance with the procedures established in this rule. The parties shall contact the court administrator as soon as possible to permit scheduling of ITV facilities. A written, signed stipulation requesting the use of ITV shall be filed with the court at least 24 hours prior to the date set for the ITV hearing or proceeding. The stipulation shall be substantially in the form set forth in the Stipulation and Approval form as published by the state court administrator. The parties are responsible for making arrangements to use any site that is outside the control of the court in the venue county, for providing the necessary contact information to the court administrator, and for ensuring the compatibility of the equipment.

(d) Use of ITV Upon Motion.

(1) Request. Any party may, by motion, request the use of ITV for a hearing or proceeding in accordance with this rule. No motion for use of ITV shall be heard until the moving party serves a copy of the motion on the opposing counsel and files the original with the court administrator at least seven (7) days prior to the scheduled hearing or proceeding for which ITV use is requested. The moving party may, ex parte, contact the court for an expedited hearing date on the motion for use of ITV and for waiver of the usual notice of hearing. The moving party is responsible under Rule 131.02(c) for making arrangements to use any site that is outside the control of the court in the venue county, for providing the necessary contact information to the court administrator, and for ensuring the compatibility of the equipment. The motion shall include, as an attachment, a notice advising the other parties of their right to object to use of ITV, the consequences of failing to timely file an objection, the duty to exchange information under Rule 131.04, and the prohibition on recording in Rule 131.06(i). A sample notice is published by the state court administrator.

(2) Objection. Any party objecting to a motion for use of ITV may file and serve a response to the motion 48 hours prior to the hearing on the motion for use of ITV.

(3) Burden of Proof. The moving party must establish good cause for use of ITV by a preponderance of the evidence.

(4) Good Cause. The Court shall consider the following factors to determine "good cause":

- (i) Whether a timely objection has been made;
- (ii) Whether any undue surprise or prejudice would result;
- (iii) The convenience of the parties, counsel, and the court;
- (iv) The cost and time savings;
- (v) The importance and complexity of the proceeding;
- (vi) Whether the proponent has been unable, after due diligence, to procure the physical presence of a witness;
- (vii) The convenience to the parties and the proposed witness, and the cost of producing the witness in relation to the importance of the offered testimony;
- (viii) Whether the procedure would allow effective cross-examination, especially where documents and exhibits available to the witness may not be available to counsel;
- (ix) Whether the surroundings maintain the solemnity and integrity of the proceedings and thereby impress upon the witness the duty to testify truthfully;
- (x) Whether the witness is presently in prison or incarcerated; and,
- (xi) Such other factors as the court may, in each individual case, determine to be relevant.

(5) Emergency Circumstances. The court may shorten the time periods provided in this Rule 131.02(d) upon a showing of good cause.

(6) Determination. If the use of ITV is thereafter allowed and ordered by the court, the hearing shall proceed, by ITV, in accordance with the provisions of this rule. If the court determines that good cause for the use of ITV has not been established, the hearing or proceeding shall be heard as provided by the Rules of Civil Procedure and General Rules of Practice.

(Added effective March 1, 2009.)

Rule 131.03 Costs and Arrangements; Certification

(a) Costs. The party or parties, other than the court, requesting use of ITV for any hearing or proceeding shall be responsible for any additional use or other fees over and above those normally incurred by the venue county in connecting from one court site to another court site within the district or collaboration area.

(b) Arrangements. If the court on its own initiative orders ITV, the court shall, through the court administrator where the case is venued, establish and make arrangements to carry out the ITV procedures required in order for the court to hear the case as an ITV hearing or proceeding. In all other cases it will be the responsibility of the party requesting the use of ITV to contact the court administrator where the case is venued who shall, working with the judge assigned, establish a hearing date and time so that the case may be scheduled as an ITV hearing or proceeding. The court and counsel shall use reasonable efforts to confer with one another in scheduling ITV hearings or proceedings so as not to cause, delay or create scheduling conflicts.

(c) **Service.** The moving party shall have the responsibility of preparing, serving and filing the motion and notice of motion documents as required by this rule.

(d) **Certification.** By signing a stipulation or motion for use of ITV, a person certifies that the use of ITV will be in accordance with the provisions of this rule, including, without limitation, the requirement in Rule 131.06(i) that no recording shall be made of any ITV proceeding except the recording made as the official court record.

(Added effective March 1, 2009; amended effective July 1, 2015.)

Rule 131.04 Exchange of Information

Whenever ITV is to be used to conduct a hearing or proceeding, evidentiary exhibits shall be exchanged with all other parties and submitted to the court, as appropriate, prior to the commencement of the hearing or proceeding.

(Added effective March 1, 2009.)

Rule 131.05 Location of Participants

During the ITV hearing:

(a) The judge may be at any terminal site.

(b) The court clerk shall be in the venue county unless otherwise authorized by the presiding judge.

(c) Except as otherwise provided in Rule 131.05(d) regarding commitment proceedings, counsel for the parties shall be present at the site from which the party they represent will participate in the hearing, unless the court approves another location prior to the hearing, and witnesses and other interested parties may be located at any terminal site that will allow satisfactory video and audio reception at all other sites.

(d) In commitment proceedings, the respondent's attorney shall be present at the ITV site from which the respondent will participate in the proceedings.

(Added effective March 1, 2009.)

Rule 131.06 Proceedings

In any proceeding conducted by ITV under this rule:

(a) Parties entitled to be heard shall be given prior notice of the manner and time of the hearing or proceeding.

(b) Witnesses may testify by ITV at all hearings, including contested matters.

(c) Regardless of the physical location of any party to the ITV hearing or proceeding, any waiver, stipulation, motion, objection, decision, order or any other actions taken by the court or a party has the same effect as if done in person. Court orders that bear the presiding judge's or judicial officer's signature may be transmitted electronically to the various ITV sites for the purpose of service.

(d) The court administrator of the venue county will keep court minutes and maintain court records as if the proceeding were heard in person.

(e) All proceedings held by ITV will be governed by the Minnesota Rules of Civil Procedure, the General Rules of Practice and state law, except as herein provided. Courtroom decorum during ITV hearings will conform to the extent possible to that required during traditional court proceedings.

(f) A sheriff, sheriff's deputy, bailiff or other licensed peace officer shall be present at each ITV site for the purpose of maintaining order, as the court deems necessary.

(g) The court shall ensure that each party has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio transmission and recording or allowing counsel to leave the conference table to communicate with the client in private.

(h) Judges may continue any hearing that cannot proceed due to ITV equipment problems or failure, unless other arrangements to proceed with the hearing are agreed upon by all parties.

(i) No recording shall be made of any ITV proceeding except the recording made as the official court record. This Rule 131 does not supersede the provisions of the Minnesota Rules of Public Access to Records of the Judicial Branch.

(Added effective March 1, 2009; amended effective July 1, 2015.)

Rule 131.07 Administrative Procedures

The following administrative procedures are applicable to all ITV proceedings:

(a) Off-Camera Presence. During a hearing conducted by ITV, all off-camera persons at any participating ITV terminal site must be identified for the record. This shall not apply to members of the public located in general public seating areas of any courtroom.

(b) Court Administrator Duties. The court administrator for each county shall be responsible for the following:

(1) Ensure that the ITV equipment is ready and functioning properly in advance of any ITV hearing, so that there will be no interference with the punctual commencement of a hearing.

(2) Provide participants an opportunity to become familiar with use of the ITV equipment and courtroom procedure prior to commencement of the hearing.

(3) Set ITV system configuration as designated by the presiding judge. The presiding judge shall consider the objections or concerns of any party.

(4) Monitor audio and video quality, making adjustments and providing technical assistance throughout the hearing as necessary.

(5) Ensure that any court documents or exhibits that the judge or judicial officer will require prior to or during the course of the hearing are delivered or available to the judge or judicial officer prior to commencement of the hearing.

(6) Be familiar with problem management procedures, including steps to be taken in performing initial problem determination, identity and location of individual(s) who should be contacted if initial problem/resolution attempts fail, and service call placement procedures.

(c) Technical Standards. The following technical standards should be followed:

(1) To optimize picture clarity, the room should have diffused lighting and window shades to block external light.

(2) To optimize viewing, monitors should be placed in a darkened area of the room and be of sufficient size and number to allow convenient viewing by all participants.

(3) Cameras and microphones should be sufficient in number to allow video and audio coverage of all participants, prevent crowding of participants, facilitate security, and protect confidential communications.

(4) Audio and visual must be synchronized and undistorted.

(5) All hearing participants should speak directly into their microphones.

(Adopted effective March 1, 2009; amended effective July 1, 2015.)

Advisory Committee Comment - 2008 Amendment

In October 1999 the Supreme Court informally approved the use of ITV in civil cases but did not adopt any specific rules. The addition of Rule 131 in 2008 is intended to provide a uniform procedure permitting the use of interactive video teleconferencing (ITV) to conduct hearings and admit oral testimony in civil cases. It is based on protocols developed and implemented for a pilot project in the Ninth Judicial District and later tweaked by a subcommittee of the Court's former Technology Planning Committee. The success of the pilot project is reported in NATIONAL CENTER FOR STATE COURTS, COURT SERVICES DIVISION, ASSESSMENT OF THE INTERACTIVE TELEVISION PROGRAM IN THE NINTH JUDICIAL DISTRICT OF MINNESOTA (Sept. 1999).

Rule 131.02 identifies the situations in which the district court may authorize the use of ITV by order: upon the court's own initiative, upon stipulation by the parties, or upon a showing of good cause. The court as part of its overall case management practice initiated the bulk of the orders in the Ninth Judicial District pilot project. It is anticipated that use of ITV will vary by district, depending on factors such as geographical size and the nature of the cases.

Rule 131.02(b) recognizes that when a court orders the use of ITV on its own initiative, the court must notify the parties of the use of ITV. Notices are to be in accordance with rules of civil procedure and the general rules of practice. Once an order is filed, Minn. R. Civ. P. 77.04 requires the court administrator to serve notice of the order immediately by mail, and Minn. Gen. R. Prac. 1.03 requires that service be made on a party's attorney if represented, otherwise on the party directly. The notice of ITV use may also be incorporated into a scheduling order issued under Minn. Gen. R. Prac. 11.03. Regardless of the precise mechanism, the notice of ITV use must include the information required in Rule 131.02(b). A sample notice is set forth for publication by the state court administrator.

Parties may, subject to court approval, stipulate to the use of ITV under Rule 131.02(c). Upon reaching a stipulation, the parties must contact the court administrator as soon as possible to obtain a date and time for the ITV hearing. Failure to provide adequate lead time may result in rejection of the stipulation. The parties are responsible for making arrangements to use any site that is outside the control of the court in the venue county. Parties should be aware that use of court and other governmental terminal sites might be subject to collaboration agreements entered into between courts and other government agencies. This may limit the availability of, or control the costs of using or accessing certain terminal sites, particularly those outside the county or district where the action is venued or outside the state's dedicated MNET network. Under Rule 131.03 parties requesting use of ITV for any hearing or proceeding are responsible for any additional use or other fees over and above those normally incurred by the venue county in connecting from one collaboration site to another. Parties are also responsible for ensuring compatibility of equipment for sites outside the control of the venue county.

Finally, a written, signed stipulation in the format substantially similar to the form appended to the rule must be filed with the court no later than twenty-four (24) hours prior to the hearing. By signing the stipulation the parties certify that they will follow the protocol, including, without

limitation, the requirement in Rule 131.06(i) that no recording shall be made of the ITV proceeding except a recording made as the official record of the proceeding. Access to recordings of proceedings is governed by Rule 4, subdivision 3, of the RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH.

Rule 131.02(d) sets forth requirements for requesting ITV use when there is no stipulation by the parties. A formal motion is required, and it must be served and filed at least seven days prior to the scheduled hearing or proceeding for which ITV use is requested. The rule authorizes ex parte contact with the court for purposes of obtaining an expedited hearing date on the motion for use of ITV. See Minn. Gen. R. Prac. 115.04 (non-dispositive motions normally must be served and filed at least 14 days in advance of the hearing). The moving party is responsible under Rule 131.03 for making arrangements to use any site that is outside the control of the court in the venue county, for providing the necessary contact information to the court administrator, for ensuring the compatibility of the equipment, and paying any additional costs incurred by the court in facilitating the ITV session. The motion must also include or be accompanied by a notice informing opposing parties of their right to object, consequences of failure to object, requirements for exchange of information, and prohibitions on recording an ITV session (a sample notice is provided for publication by the state court administrator).

Objections to a motion for use of ITV must be made prior to the hearing on the motion. The failure of an opposing party to object may be considered along with other factors set forth in Rule 131.02(d)(4) that may determine good cause for use of ITV. The moving party has the burden of establishing good cause.

Rule 131.02(d)(5) permits the court to shorten the time periods provided for in Rule 131.02 in emergent circumstances upon a proper showing. As of the time of the drafting of this commentary, a different time period is established for requesting ITV use in commitment cases under Rule 14 of the SPECIAL RULES OF PROCEDURE UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT (requires notice to the other party at least 24 hours in advance of the hearing, and court approval). The drafting committee is of the opinion that following the protocol with the ability to shorten the time frames when necessary will be sufficient to address the needs of commitment and other matters covered by this rule.

Rule 131.03 places responsibility for costs and site arrangements with those seeing to use ITV. The court assumes this responsibility when ordering ITV on its own initiative, as is done for the bulk of the ITV proceedings in the Ninth Judicial District pilot project. When a party or parties initiate the request, however, Rules 131.02(c) and 131.02(d) shift some of the responsibility to the requesting party or parties. Parties also certify that they will comply with the protocol, including the prohibition in Rule 131.06(i) against recording ITV sessions.

Rule 131.04 attempts to highlight an important logistical requirement when ITV is used. Documents and other information need to be exchanged and submitted to the court, where appropriate, prior to the ITV session. This is particularly important when the parties are located at different sites.

Rule 131.07(b) recognizes that ITV use imposes new logistical duties on court administration staff. This section is intended to assist courts as they implement ITV use and to train new staff.

*Rules 131.05-.07 set forth the ground rules for conducting ITV sessions. The prohibition on recording ITV sessions set forth in Rule 131.06(i) and echoed throughout the rule is identical to that applicable to telephone hearings under Minn. Gen. R. Prac. 115.09. This requirement is consistent with the directives of the Supreme Court regarding use of cameras in the courtroom. See *In re Modification of Section 3A(10) of the Minnesota Code of Judicial Conduct*, No. C7-81-*

300 (Minn. S. Ct., filed Jan. 11, 1996) (order reinstating experimental program for audio and video coverage of trial court proceedings); Order for Interactive Audio-Video Communications Experiment in First Judicial District-Mental Illness Commitment Proceedings, No. C6-90-649 (Minn. S. Ct., filed April 5, 1995); Order re Interactive Audio-Video Communications Pilot Program in Third Judicial District Mental Illness Commitment Proceedings, No. C6-90-649 (Minn. S. Ct., filed Jan. 29, 1999); Order for Interactive Audio and Video Communications, Fourth Judicial District, Mental Health Division, Price and Jarvis Proceedings, No. C6-90-649 (Minn. S. Ct., filed April 8, 1991).

Rule 131.05(c) requires that counsel and their party must be present at the same terminal site unless otherwise permitted by the court. In commitment cases, court rules do not permit counsel for the patient and the patient to be present at different sites. See Rule 14 of the Special Rules of Procedure Under the Minnesota Commitment and Treatment Act. Witnesses and other participants may be located at any terminal site that allows satisfactory video and audio reception.

Rule 131.07(c) describes equipment and room standards in functional terms. A more detailed discussion of technical issues and terminology can be found in STATEWIDE VIDEOCONFERENCING COMMITTEE, BRIDGING THE DISTANCE: IMPLEMENTING VIDEOCONFERENCING IN WISCONSIN (10/30/2007) (a dynamic document that is continually updated and that is currently available for download from the Wisconsin Supreme Court Web site, located at <http://www.wicourts.gov/about/committees/ppacvidconf.htm>).